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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/155,740	02/27/98	LEWIS	D 0885/00930

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EXAMINER

PRATT, H

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

10
11/20/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/155,740

Applicant(s)

Lewis et al.

Examiner

Pratt, H.

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10-10-00.
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-17 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-17 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Applicable Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinwand or Reznik in view of the prior art and GB 1004522 and GB 1228175 (from Applicants PCT) and Hsieh et al.

The claims are rejected for the reasons of record cited in the last office action.

ARGUMENTS

Applicant's arguments filed 10-10-00 have been fully considered but they are not persuasive.

Applicants argue that the references are not combinable because Steinwand teaches a fresh fruit and the British patents are to dehydrated pulses. However, Steinwand teaches that it is known to infuse fruit which has a punctured or pricked skin with sugar syrups. The claims do not exclude the teaching of the use of hydroxide. It is not seen that the teachings are in opposite as they both teach infusing with hydrophilic materials. Steinwand teaches that it is known to infuse fruit and the British patent that it is known to infuse vegetables. No patentable distinction is seen at this time between a fruit and a vegetable. See Viard who discloses that "in botanical

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terms, therefore, a fruit is in fact a vegetable” p. 11, 2nd col. 2nd. para. for the definitions of fruits and vegetables.

It is not seen that the references of Steinwand and Hsieh are in different technical fields, as they both are treating fruits with sweet solutes.

Again, the use of hydroxide has not been excluded from the comprising type claims. Hsieh shows that it is known to infuse dried fruit with humectants, albeit in a lengthy process. Certainly, puncturing the skins will speed up the process considerably.

Applicants argue as to Reznik and the British patents. Even though they don't teach starting with a dried product they do teach infusing solutes into vegetables. Reznik teaches hydrating dried dates with water. Faster hydration is accomplished by fissuring the dates. The British patent disclose it is known to infuse with solutes. It is well known to infuse fruits with solutes as taught also by Steinwand.

Applicants argue as to Steinwand and Hsieh that they are from different fields, one being whole fresh fruits, and the other dried raisins. However they are both infused and they are both fruits. Hsieh is infused slowly by tumbling with a humectant. Steinwand teaches infusing a tough skin with a humectant (sugar solutions of increasing concentration) by pricking it. Hsieh shows an even tougher skin because it is dried, which can be infused without disrupting the skin by simple osmosis. The efficiency of infusion is increased by disrupting the skin as disclosed by Steinwand. The basic difference between the two is the dried skin which can be made more impermeable as taught by Steinwand who actually pricks the skin.

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Applicants argue that Reznik discloses hydrating dates, and the British patents hydrating fresh peas. Certainly, the British patents can be used for the teaching that it is known to hydrate using solutes. It is not seen that adding solutes to the water is in opposite of using only water, as they both increase the amount of water in the composition.

Applicants argue that Reznik increases the water activity of dried dates by vacuum rehydration and Hsieh et al. does the opposite. However, Reznik shows that the permeability of the dates can be increased by fissuring of the skin, and Hsieh et al. that humectants will be absorbed anyway without any fissuring. Therefore, to combine the two, one would have increased speed of absorption due to the fissuring.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication should be directed to Helen Pratt at telephone number (703) 308-1978.

hp 11-7-00


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